IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.35909 of 2008

BISHWANATH CHAUDHARY
S/o- Late Jhagaru Chaudhary
R/o- Village – Pachlakhi,
P.S. - Pachlakhi,
P.S. - Nautanpur,
District – Siwan
At present posted as Head Clerk,
Office of D.R.D.A., Vikash Bhawan,
Collectoriate, District - Patna

Versus
THE STATE OF BIHAR
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3. 26.11.2008 Heard learned counsel for the petitioner and the State.

Petitioner is an accused for the offence registered under Section 420 of the Indian Penal Code and section 138 of the Negotiable Instruments Act.

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The allegation against the petitioner is to the effect that he cheated the complainant by getting the sale deed executed in his favour by giving him five post dated cheques by way of consideration money, which were later on dishonored. In nutshell, the allegation is that petitioner cheated the complainant in connection with the purchase of the property.

Learned counsel for the petitioner submits that on perusal of the copy of the sale deed annexed to the supplementary affidavit filed today,

it would appear that entire consideration money was paid by the petitioner and received by the complainant, and as such, nothing remained to be paid. As regards the post dated cheques is concerned, the submission is that the petitioner ought to have taken back those cheques from the complainant since payment was already made at the time of execution of the sale deed. Even then those cheques have been used by the complainant by presenting the cheques for payment.

Learned counsel for the petitioner is not in a position to explain the averments made in the same sale deed where the consideration was arrived for sum of Rs. 2 lacs 14 thousand whereas the payments is alleged to have been made to the tune of Rs. 2 lacs 50 thousand.

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It is further submitted on behalf of the petitioner that as a matter of fact he himself has been cheated by such property which was executed and was assured to be free from litigation which later was found to be a litigated one which was subject matter of partition suit and therefore the petitioner has lodged a complaint against the complainant as per the complaint contained in Annexure-5. It is further submitted that this

complaint has been filed after long delay.

Learned counsel appearing on behalf of the complainant on the other hand, submits that it would appear on perusal of the complaint that with regard to the execution of the sale deed in question on 12.12.2005 as he was not having a adequate cash in his accounts and the cheques were bounced and after giving the notice, petitioner did not pay the cheques amount. It is further submitted that issuance of cheques by the petitioner and the fact that those cheques bounced, is an admitted fact.

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Considering the facts and circumstances of the case and the averments made in the petition, the submission of the parties as well as the materials brought on record, I am not inclined to grant anticipatory bail to the petitioner. Accordingly prayer for bail on behalf of the petitioner is rejected.

If the petitioner surrenders before the court below and makes prayer for bail, the same will be considered on its own merits and disposed of without being prejudiced by the order of this court.

Jagdish **(Shailesh Kumar Sinha,J)**